No. 15637

United States Court of Appeals

For the Ninth Circuit

ARINE COOKS & STEWARDS, AFL, a voluntary association, JAMES O. WILLOUGHBY, *et al., Appellants*

vs.

PANAMA STEAMSHIP CO. LTD., a corporation, *et al., Appellees*

PPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON SOUTHERN DIVISION

BRIEF OF APPELLEES

SUMMERS, BUCEY & HOWARD,
CHARLES B. HOWARD,
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JURISDICTIONAL STATEMENT

This is an appeal from an interlocutory injunction sued by the District Court on the complaint (R. 4 *ff*) Appellees for injunctive relief against and damages om Appellants for intentional interference with the ghts of the Liberian vessel "NIKOLOS", its owner, arterer and master to discharge a cargo at Tacoma, ashington, pursuant to contract of affreightment. ne cargo had been loaded at a Mexican port.

Jurisdiction of the District Court was based on Title U.S.C. §1331, the case arising under Article III, ction 2 of the Constitution of the United States by rtue of the maritime nature of the Appellees' cause of it; and the case also arising under Articles VII and IV of the Treaty of Friendship, Commerce and Navition between the United States and the Republic of beria, 54 Stat. 1739; TS 956; 201 LNTS 163 (Text

of above Articles in Appendix B), guaranteeing the rights infringed by Appellants. The right to seek equitable relief for a maritime tort is preserved by Title 28 U.S.C. §1333.

The jurisdiction of this court to review the order of the court below granting a temporary injunction is found in Title 28 U.S.C. §1292(1); and is also claimed by the Appellants under Title 29 U.S.C. §110.

APPELLEES' STATEMENT OF CASE

Appellees, as plaintiffs below, commenced this suit seeking injunctive relief and damages from Appellants and other defendant unions and union members. The proceedings in the trial court to date have been limited to hearings upon Appellees' application for a restraining order or temporary injunction (R. 22, 118).

The only question considered and decided at these preliminary hearings in the court below was whether U. S. labor unions and their members could be restrained and enjoined from interfering, by picketing conducted at a United States port, with the completion of a voyage by a foreign-owned vessel, lawfully registered under the flag of a friendly foreign nation, engaged on an international voyage, and manned entirely by alien crew members serving under foreign shipping articles (See Findings of Fact I, II, V, VI, XII, XIII, R. 31-34; Conclusions of Law III, R. 37. Decision of District Judge Boldt, R. 118, *et seq.*). The trial judge answered this question in the affirmative and granted Appellees a temporary injunction *pendente lite* against Appellants (R. 41-3).

The steamship "NIKOLOS," owned by Appellee Panna Steamship Co., Ltd., a foreign corporation (Finding I, R. 31), is a foreign merchant vessel registered under the laws of the Republic of Liberia (Finding V, R. 32). Appellee Paleocrassas, a citizen of Greece, was master (R. 13) and Appellee Seatankers, Inc., a foreign corporation (Finding II, R. 31) was time charterer of the "NIKOLOS" (R. 11).

None of the officers or crew members aboard the "NIKOLOS" were citizens of the United States (R. 13). They were serving upon Articles of Employment under the laws of Liberia which were opened at Cardiff, Wales, on May 24, 1954 (Finding VI, R. 32, 13).

The "NIKOLOS" loaded a cargo of bulk salt at a west coast of Mexico port for transport to and discharge at Tacoma, Washington (R. 14; Finding V, R. 32). It was a tramp steamer which had not been engaged in any prior voyages carrying salt from Mexican to United States ports before the voyage in question (R. 76).

In their opening brief Appellants have ingeniously — but incorrectly — characterized the voyage being performed by the "NIKOLOS" as:

"coastal shipping" (Appellants' Br. 2)
"coastal trade" (Appellants' Br. 9)
"Pacific Coast shipping trade" (Appellants' Br. 19)

This rather obvious effort by Appellants to pin a *local* label on the voyage of the "NIKOLOS" is misleading and improper.

The term "coastwise" is used in 46 U.S.C. §883, defining vessels documented under the laws of the United

States which are lawfully entitled to carry cargoes between ports of the United States, 46 U.S.C. §883; and also in 46 U.S.C. §808, referring to the "coastwise trade" in connection with the enrollment, licensing, sale and charter of vessels.

Neither of the above statutes applies to the "NIKOLOS," which is a foreign-owned and foreign-registered ship, and which was not engaged in *coastal* or *coastwise* trade; as those terms are normally used in statutes and in terminology of maritime commerce, but in *international* trade and a *foreign* voyage.

There was no labor dispute, strike or discontent among the officers and crew members aboard the "NIKOLOS," or between the shipowner, charterer and members of the crew (R. 14). There is no evidence that any members of the crew of the "NIKOLOS" were members of any U. S. labor union (R. 67). In fact, the master testified that officers and crew members of the vessel were affiliated with various Greek unions (R. 14, 76).

Upon arrival of the "NIKOLOS" in Tacoma harbor on the early morning of June 10, 1957, a small cabin cruiser owned and manned by some of the Appellants intercepted the "NIKOLOS" in the harbor (R. 15). This cabin cruiser bore one or more signs "PICKET BOAT" (R. 59) and on or about June 14 an additional sign was displayed on the picket boat reading substantially as follows: "AFL-CIO seamen protest loss of their livelihood to foreign flag ships with sub-standard wages or sub-standard conditions" (R. 60, 56, and see Plaintiffs' Exhibit 1 and 2 for pictures of the picket boat cruising around the "NIKOLOS").

As a result of the more or less continuous activities f the above-described picket boat operated by Appel-nts the consignee of the salt cargo at Tacoma would ot provide a berth where the cargo could be dis-harged, being fearful that shore and plant workers ould refuse to cross threatened picket lines and result a forced shutdown of the Hooker Electrochemical lant (R. 100-104 and Findings XI, XII, XIV at . 33-34).

Although otherwise ready and entitled to proceed to tended discharge dock at Tacoma (Finding VIII, . 33) the "Nikolos" was forced to remain at anchor Tacoma harbor from June 10 until June 17 due to ie inability of Appellees to obtain assignment of a scharge berth and the refusal of third parties to pro-de tugs and pilotage assistance to the intended dis-harge dock while picketing activities by Appellants nd others continued around the "Nikolos" (Finding IV, R. 34, 82-86 and 110). Repeated attempts to ob-in a discharge berth between June 10 and June 13 ere unsuccessful because of the picketing activities nd threats of picketing by Appellants (R. 11, 13, 16).

While Appellant Willoughby referred in his testi-ony to an alleged agreement of the International ransport Federation which he claimed had some bear-g upon the "wages, hours and working conditions" hich would have to be maintained on a vessel such as ie "Nikolos" when operating in a so-called "coastal peration" (R. 28-9) Appellants did not produce any ich agreement and did not establish its applicability the "Nikolos" as claimed (R. 114).

The Court found that Appellants would continue their unlawful activities unless restrained (Findings XII and XIV, R. 34, 122), causing Appellees and the public substantial and irreparable injury (Findings XVII, XVIII and XIX, R. 35, 36, 122); that there were no public officers charged with the duty of protecting the "NIKOLOS" from the picketing (Finding XXII, R. 36, 127); that Appellees had no adequate remedy at law (Finding XXI, R. 36, 122) and that Appellees would suffer greater injury if an injunction were not granted than Appellants would if one were issued (Finding XX, R. 36, 122).

The Court concluded that there was no "labor dispute" within the meaning of the Norris-LaGuardia Act and that that Act was inapplicable because of the foreign nature of the dispute (Conclusions I and II, R. 37, 121). Judge Boldt also stated that upon the Findings made that Act would not prevent an injunction, even if it were applicable (R. 121 *ff*).

The question of damages was left for subsequent trial.

ARGUMENT

Summary of Argument

Appellants' sole argument on this appeal is that the Norris-LaGuardia Act (29 U.S.C. §101, *et seq.*) deprived the court below of the power to issue an injunction, claiming that the facts present a "labor dispute" within the literal sweep of the Act:

> "Its definition of 'labor dispute' is satisfied if the controversy concerns terms or conditions of em-

ployment, without additional qualification." (Appellants' Br. 9-10)

We contend on behalf of Appellees that the Act must construed in the light of Congressional intent, and at no Congressional intent is evident, either in the atement of purpose in the Act, or in its legislative history, to include within the restrictive provisions of the ct cases involving terms and conditions of employent of foreigners, by foreigners, on foreign-flag vesls making isolated or infrequent calls at United ates ports.

Furthermore, Appellees contend that the universal d all-inclusive application of the Act claimed by Apllants should not be implied by the courts, with the ave international consequences that would flow from and that it has never been the policy of the courts to extend the application of such universal language comparable cases.

The Supreme Court of the United States has held e other major Act of Congress designed to promote llective bargaining (the Taft-Hartley or Labor Manement Relations Act, 29 U.S.C. §141 *ff*) inapplicable facts involving a foreign vessel identical to the prest case.

To find the Norris-LaGuardia Act applicable and us require collective bargaining on this foreign flag ssel without benefit of the aid of the Taft-Hartley Act achinery would violate the treaty rights of Appellees 4 Stat. 1739—Text in Appendix B).

For these reasons, it is the position of Appellees that

a protest such as was made in this case by an American union as to standards of wages and conditions of employment maintained on a foreign-flag vessel, engaged on a foreign voyage, and manned by a foreign crew is not a "labor dispute" within the meaning of the Norris-LaGuardia Act. Therefore, the granting of a temporary injunction by the District Court was entirely proper.

A. The Universal Language in the Norris-LaGuardia Act Is Limited to Accomplishment of Congressional Intent

While it might appear from an initial reading of the definitions in the Norris-LaGuardia Act, 29 U.S.C. §113 (See Appendix to Appellants' brief and Appendix C to this brief), that the facts of this case fall within the literal language of the Act, courts have uniformly refused to accept literally such language in the Act.

The absurdities of a literal and verbatim construction of this particular section of the Act were clearly demonstrated in *Donnelly Garment Co. v. International L. G. W. Union* (W.D. Mo. W.D. 1937) 20 F.Supp. 767, where the court stated at page 770:

> "We have said that certain declarations in section 13(a) cannot be taken literally. To illustrate: Section 13(a) declares that 'a case shall be held to involve or grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation.' But A and B, both manufacturers of ladies' garments, may have a controversy with each other over a contract involving the sale and purchase of real estate.* * *

It would be nonsense to say that that controversy involves or grows out of a 'labor dispute.'

* * * * * * * *

"If any intelligent meaning is to be gathered from section 13, it is necessary that the several provisions of the section shall be read together, although grammatically its parts are independent. When the several provisions of the section are read together, it is clear that the definition of 'labor dispute' given in subdivision (c) must be read into subdivisions (a) and (b)."

Donnelly Garment Co. v. International L. G. W. Union, 20 F.Supp. 767, 770.

The Supreme Court of the United States has in at ast two instances imposed limitations on the broad nd all-inclusive language found in the Norris-La-uardia Act.

In *Columbia River Packers Association v. Hinton,* 15 U.S. 143, 62 S.Ct. 520, 86 L.ed. 750, it declined to nd a "labor dispute" in a controversy between a fish acking company and a fishermen's union involving rice setting practices. The court in 1941 stated:

"We recognize that by the terms of the statute there may be a 'labor dispute' where the disputants do not stand in the proximate relation of employer and employee. But the *statutory classification, however broad, of parties and circumstances to which a 'labor dispute' may relate* does not expand the application of the Act to include controversies upon which the employer-employee relationship has no bearing."

Col. River Pkrs. Assn. v. Hinton, 315 U.S. 146-7, 86 L.ed. 753 (Italics added for emphasis)

So also in *Bakery Sales Drivers Union v. Wagshal,* 333 U.S. 437, 68 S.Ct. 630, 92 L.ed. 792 (1948), the court stated:

> "The mere fact that it is a labor union representative rather than a bill collector who, with or without the creditor's consent, seeks to obtain payment of an obligation, does not transmute a business controversy into a Norris-LaGuardia 'labor dispute.' "
>
> *Bakery Sales Drivers Union v. Wagshal,* 333 U.S. 437, 444, 92 L.ed. 792, 797.

In this case, Appellants do not purport to be the collective bargaining representatives of any officers or members of the crew of the "NIKOLOS." The testimony of the Master of the vessel shows that none of the crew members were affiliated with the Appellant union (R. 15).

The obvious purpose of the picketing by Appellants of this foreign flag vessel was an attempt to prevent the "NIKOLOS" from engaging in the international bulk salt transport trade between Mexican and United States ports in competition with U. S. flag vessels upon which members of the Appellant union would be entitled to seek positions as crew members. See Affidavit of Appellant Willoughby in Response to Order to Show Cause (R. 25). Finding of Fact XXIV (R. 36-7) is to the same effect and was included in the Findings at the express request of counsel for Appellants (R. 135).

Admission of the same purpose for the picketing activities is acknowledged in Appellants' brief, where counsel refer to the picketing as a "protest" against "a

rious threat to the employment security of MCS members" (Br. 9).

Although a protest may have been deemed justified Appellants as to whether the "Nikolos" should be lowed to engage in this particular bulk salt cargo ade, and although Appellants claim that this foreign-flag vessel pays lower wages and provides lower andards of working conditions to members of its crew an would be required on U.S. flag vessels engaged in e same salt cargo trade, this does not create a "labor spute" within the scope of the Norris-LaGuardia ct. This will become apparent from an examination of e following additional cases where federal courts ve found it proper to restrict the literally universal nguage found in the Norris-LaGuardia Act, and particularly in the section of the Act containing definition terms such as "labor dispute" (29 U.S.C. §113).

For example, where the United States government d taken over the operation of coal mines in this country, and was acting in the commonly accepted status of employer, the United States Supreme Court in 1947 ld the Norris-LaGuardia Act inapplicable to the government in *United States v. United Mine Workers,* 330 S. 258, 67 S.Ct. 777, 91 L.ed. 884. In affirming the injunctive relief granted by the lower court, the Supreme ourt stated:

> "The purpose of the Act is said to be to contribute to the worker's 'full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coer-

> cion of employers of labor, or their agents, in the designation of such representatives . . . for the purpose of collective bargaining . . . ' These considerations, on their face, obviously do not apply to the Government as an employer or to relations between the Government and its employees."
>
> *United States v. United Mine Workers,* 330 U.S. 274, 91 L.ed. 903.

In the last term, the Supreme Court ruled that the Norris-LaGuardia Act did not prohibit specific performance of a collective bargaining agreement provision for arbitration. *Textile Workers Union v. Lincoln Mills,* 353 U.S. ....., 77 S.Ct. ....., 1 L.ed.(2d) 972, 981-2.

Following the *Lincoln Mills* case, *supra,* the United States District Court at Brooklyn, New York, in two as yet unreported decisions, has held that the Norris-LaGuardia Act does not prohibit injunctions even against American unions charged with striking against an *American* steamship company manned by members of the American union where collective bargaining was found inappropriate.

In *A. H. Bull Steamship Co. v. Seafarers' International Union,* Eastern District New York Civil No. 18007, an opinion issued on September 27, 1957 by U.S. District Judge Bruchhausen held that a picket line of the union could be enjoined where it was in violation of an unexpired collective bargaining agreement between the parties which contained a no-strike clause.

In a companion case, *A. H. Bull Steamship Company v. National Marine Engineers' Beneficial Association and International Organization of Masters, Mates and*

'ilots, Eastern District New York Civil No. 18060, an pinion by the same judge issued on October 17, 1957 eld that picketing by the defendant unions could be njoined since the members of the unions were "super- isors" under the National Labor Management Rela- ons Act of 1947, 29 U.S.C. §164(a), which specifically rovides that supervisors are not "employees for the urpose of any law, either national or local, relating to ollective bargaining."

The decisions in the two *Bull Steamship Company* ases, *supra,* are particularly significant in this case nce they involve strike and picketing activities by an *merican* labor union against an *American* steamship ompany which manned its vessels with *American* sea- en. Nevertheless, the U.S. District Court in New ork found in the two *Bull* cases that the Norris- aGuardia Act did not prevent the issuance of in- unctions. In the present case, the factual situation is urther removed from the restrictions of the Act than e two *Bull Steamship Company* cases, *supra,* since *American seamen* were employed on the "NIKOLOS" nd the American union (Appellant) has no basis to aim collective bargaining rights as to crew members n the "NIKOLOS."

In *Compania Naviera Hidalgo S.A. v. Benz* (D.Ore. 52) Civil No. 6629, a strikingly similar situation to e facts of this case was before District Judge Solo- on. It involved another Liberian flag, foreign owned ssel, the SS "RIVIERA" at Portland on an interna- onal voyage. Injunctive relief was there sought by the reign shipowner against representatives of an Ameri-

can maritime labor union picketing on behalf of members of the crew of the "RIVIERA" who had begun a sit-down strike in protest against wages and working conditions on the vessel. Only the participation of the crew distinguishes that case from the present case, where no strike or labor discontent was present on the "NIKOLOS" (R. 14).

In granting an injunction to the foreign shipowner against the American seamen's union in the *Benz* case, *supra,* Judge Solomon in an unreported opinion issued November 22, 1952 held the Norris-LaGuardia Act inapplicable to the activities of both the crew and the American union for the following reasons:

> "It is a well-established rule when seamen sign articles on a vessel for a voyage they work under different conditions from workers on the shore and they must of necessity be governed by different rules with regard to their right to strike. Seamen are wards of the Admiralty, that is, great care has been taken by the United States and other nations to safeguard their rights and protect them from injustice. In view of such paternal attitude, the courts have held that it is not only right and proper but also absolutely necessary that seamen must strictly adhere to their contracts. 'When articles are signed by a crew for a voyage all bargaining individual or collective is ended for the duration of the voyage. A contract is made binding both on the owner and the seamen that is lawful, if the articles comply with the statutes, and should be lived up to scrupulously.' *Rees v. U.S.,* 95 F. 2d 784, 791, 792. In this case the seamen signed articles which entitled them to the same rights, privileges and working conditions as British sea-

men. The provisions of the articles are the standard articles used for foreign voyages in Great Britain and were arrived at through collective bargaining. In addition thereto, such articles were approved by the German Labor Office for the German seamen who constitute the majority of the crew at the time they signed the articles in Bremen, Germany. Therefore *they may not now in a foreign port during the period for which they signed on, either themselves or through the Sailors' Union of the Pacific or any other bargaining agent, attempt to reopen the question of wages, hours and working conditions which had previously been agreed upon in the articles which they had signed with the vessel.*" (Italics added for emphasis)

Compania Naviera Hidalgo S.A. v. Benz (D. Ore. 1952) Civil No. 6629 — unreported (Complete Opinion in Appendix D to this brief).

An appeal of the above case was dismissed by this Court as moot, *Compania Naviera Hidalgo S.A. v. Benz* (1953) 205 F.2d 944.

The foregoing authorities clearly establish that the Norris-LaGuardia Act only affects disputes over terms and conditions of employment which Congress intended to be settled by collective bargaining procedures and that it is totally inapplicable to a dispute involving terms and conditions of employment of foreign seamen aboard a foreign vessel, where the existence of articles makes collective bargaining inappropriate.

Cases relied upon by Appellants as upholding the independent right of a union to picket an employer competing with employers with whom the union has

contracts (Br. 11-13) are all distinguishable, since those cases involve situations where collective bargaining was appropriate between the employer and his employees, while collective bargaining is not applicable in the present case because of the existence of shipping articles.

B. Nothing in the Norris-LaGuardia Act Itself or Its Legislative History Indicates a Congressional Intent to Make the Act Applicable to Controversies Involving Terms and Conditions of Employment of Alien Seamen on Foreign Flag Vessels

The Norris-LaGuardia Act contains no express statement that it is to be applicable to disputes involving employment aboard foreign ships or in foreign commerce generally.

Appellants in their brief suggest that the rejection of an amendment offered by one of the principal opponents of the bill, which would have made the act inapplicable to certain disputes involving "interstate or foreign commerce", indicates that the Norris-LaGuardia Act was intended by Congress to be applied to instrumentalities of "foreign commerce" such as the "NIKOLOS" even while engaged on an international voyage (Br. 11).

The full amendment offered by Congressman Beck, which he proposed to insert after the preamble paragraph of Section 102, was as follows:

> "Provided, however, That neither this section nor any subsequent section of this bill shall apply to any labor dispute which involves the suspension or discontinuance of a public utility whose con-

tinuous operation is essential to the property, health, and lives of the people of any State or community. In such cases where the welfare, health or lives of *a* (sic) public are concerned who are not parties to such labor dispute, or where a labor dispute involves the obstruction of any instrumentality of interstate or foreign commerce, in such event the power of a U.S. Court to grant injunctive relief in the interests of the public in accordance with the principles of equity jurisprudence shall not be denied or abridged, anything in this act to the contrary notwithstanding."

75 Congressional Record 5503.

It will be observed that the above amendment, which was proposed by a leading opponent of the measure, was in reality a parliamentary maneuver seeking to emasculate the bill. On the same page of the Congressional Record appears another similar amendment, also proposed by Congressman Beck, which was also rejected by the House of Representatives. This latter amendment would have specifically exempted the United States Government from the application of the Act.

In *United States v. United Mine Workers, supra,* the United States Supreme Court dealt with the suggested inferences of legislative intent to be found in the rejection of both of these amendments, and with an argument similar to that advanced by Appellants herein. In speaking of the rejection of the last noted amendment, the Supreme Court said:

"Obviously, this incident does not reveal a Congressional intent to legislate concerning the rela-

tionship between the United States and its employees."

United States v. United Mine Workers, 330 U.S. 258, 277, 67 S.Ct. 777, 91 L.ed. 884, 904.

In a concurring opinion by Mr. Justice Frankfurter he pointed out that no significance as to legislative intent could be implied from the rejection by the House of Representatives of the particular amendment cited by Appellants at page 11 of their brief. *United States v. United Mine Workers,* 330 U.S. 258, 318, 91 L.ed. 884, 925, and see footnote 4 to opinion.

A careful reading of the reports on the bill by the Committees of the House and of the Senate, and an examination of the legislative debate on the bill, fail to reveal that Congress ever considered the question now raised as to whether the Norris-LaGuardia Act would be applicable as to an instrumentality of foreign or international commerce such as this foreign owned, foreign flag and alien manned vessel, the "NIKOLOS." If anything, a contrary intention is to be derived from the not infrequent use of the adjective "American" during the course of legislative debate on the bill. For example:

Congressman Dyer, speaking in favor of the bill, stated:

" * * * necessary for the Congress to *declare for the United States a policy affecting American labor.*"

75 Congressional Record p. 5465.

Congressman Blanton, speaking in opposition to the bill:

"I believe earnestly in a proper *American* standard of wages, and an *American* standard of working conditions, and an *American* standard of working hours."

75 Congressional Record p. 5482.

Congressman Fernandez, speaking in favor of the bill, said:

"For years the *American* working people * * * ".

75 Congressional Record p. 5513.

(Italics added for emphasis)

Similarly, Senator Norris, in submitting the Majority report for the Senate Committee on Judiciary, favoring passage of the bill, referred to and quoted from the platform plank of one of the major political parties, advocating passage of such legislation to carry out pledges made to the "people of the United States." 72d Congress 1st Session, Calendar No. 176, Senate Report No. 163, at page 8.

Appellees submit that it would be quite improper to construe the above as an indication of any legislative intent to extend the applicability of the provisions of the Norris-LaGuardia Act to affect in any way the terms and conditions of employment on a foreign owned vessel, flying the Liberian flag, and manned by an entirely alien crew consisting of Greek, Egyptian, Portuguese and British nationals (R. 13, 32), particularly where the record shows that none of the crew members were affiliated with any of the defendant unions (R. 15).

C. Acts of Congress Are Limited to Domestic Effect and Do Not Apply to Foreign Vessels, in the Absence of a Clear Expression of Legislative Intent to the Contrary

While the Supreme Court of the United States has not yet been faced with the question of whether the Norris-LaGuardia Act was intended by Congress to extend to foreign and international situations such as in the present case, it has long adhered to a presumption of domestic intent only in construing statutes of the United States.

In 1909 the Supreme Court held that the Sherman Anti-Trust Act, 15 U.S.C. §1-7 was not applicable to acts done by an American corporation in Costa Rica. In *American Banana Co. v. United Fruit Co.,* 213 U.S. 347, 29 S.Ct. 511, 53 L.ed. 826, referring to the universal language in the Sherman Anti-Trust Act, the Supreme Court stated:

> "Words having universal scope, such as 'every contract in restraint of trade,' 'every person who shall monopolize,' etc., will be taken as a matter of course, to mean only everyone subject to such legislation, not all the legislator subsequently may be able to catch."
>
> *American Banana Co. v. United Fruit Co.* (1909) 213 U.S. 347, 357, 29 S.Ct. 511, 53 L.ed. 826, 832.

In fields closer to the problem before this Court, the Supreme Court of the United States has recently declined to extend the universal "any seaman" as used in the Jones Act, 46 U.S.C. §688 to make that Act applicable to a foreign seaman injured aboard a foreign

flag ship in a foreign port, although jurisdiction of the parties was temporarily present in the United States. *Lauritzen v. Larsen,* 345 U.S. 571, 73 S.Ct. 921, 97 L.ed. 1254.

Preliminarily, the Supreme Court recognized in *Lauritzen, supra,* the problem of statutory construction involved in a case having some striking similarities on international problems to those in the present case. The court stated:

> " * * * we are simply dealing with a problem of statutory construction rather commonplace in a federal system by which courts often have to decide whether 'any' or 'every' reaches the limits of the enacting authority's usual scope or is to be applied to foreign events or transactions."
>
> *Lauritzen v. Larsen,* 345 U.S. 571, 578-9, 73 S.Ct. 921, 97 L.ed. 1254, 1265.

The importance of the law of the flag of registry of the vessel was recognized by the Supreme Court in *Lauritzen, supra,* when it stated:

> "Perhaps the most venerable and universal rule of maritime law relevant to our problem is that which gives cardinal importance to the law of the flag. Each state under international law may determine for itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority over it. * * *
>
> "This Court has said that the law of the flag supersedes the territorial principle, even for purposes of criminal jurisdiction of personnel of a merchant ship, because it 'is deemed to be a part of the territory of that sovereignty (whose flag it

flies), and not to lose that character when in navigable waters within the territorial limits of another sovereignty.' * * *

"Some authorities reject, as a rather mischievous fiction, the doctrine that a ship is constructively a floating part of the flag-state, but apply the law of the flag on the pragmatic basis that there must be some law on shipboard, that it cannot change at every change of waters, and no experience shows a better rule than that of the state that owns her."

Lauritzen v. Larsen (1953) 345 U.S. 571, 584-5, 73 S.Ct. 921, 97 L.ed. 1254, 1269.

In the specific field of labor legislation, with which we are here concerned, the Supreme Court of the United States has on at least two occasions applied territorial or domestic restrictions on the application of otherwise universal language in labor statutes.

Foley Bros. Inc. v. Filardo (1949) 336 U.S. 281, 69 S.Ct. 571, 93 L.ed. 680, involved a question of whether the Federal Eight Hour Law, 40 U.S.C. §321-26, applied to work performed for an American construction contractor doing work for the United States government in Iraq and Iran. This particular Act contained universal language of "every laborer" and "any contractor or subcontractor" without limitation to the territorial United States or domestic labor.

In holding the Eight Hour Law was intended by Congress and should be applied by the courts only to situations within the territorial jurisdiction of the United States, the Supreme Court stated:

"No distinction is drawn therein (in the Act)

between laborers who are aliens and those who are citizens of the United States. Unless we were to read such a distinction into the statute we should be forced to conclude, under respondent's reasoning, that Congress intended to regulate the working hours of a citizen of Iran who chanced to be employed on a public work of the United States in that foreign land. Such a conclusion would be logically inescapable although labor conditions in Iran were known to be wholly dissimilar to those in the United States and wholly beyond the control of this nation. *An intention so to regulate labor conditions which are the primary concern of a foreign country should not be attributed to Congress in the absence of a clearly expressed purpose.*"

Foley Bros. Inc. v. Filardo, 336 U.S. 281, 286, 69 S.Ct. 571, 93 L.ed. 680, 684. (Italics added for emphasis)

We submit that the italicized statement in the above quotation from the language of the Supreme Court is especially pertinent to the problems presented in this case.

Articles of employment for crew members on foreign ships are prepared in the light of the economy, customs and standards of their own lands. For example, one maritime nation may consider a large crew employed at a modest wage more desirable than a small crew employed at higher wages. Another maritime nation may regard provision for the wife or family of the ship's officers to be aboard, or the service of alcoholic beverages, as important to the welfare and morale of the crew whereas another nation may consider such provisions to be inappropriate or undesirable.

Similarly, wage scales and conditions of employment are usually adjusted to the nationality of the crew members intended to be employed rather than being attuned to the higher or lower scales and conditions which might be found prevalent in ports of other nations at which such vessels might expect to call. Reversing the geographical situation for illustrative purposes, this Court can well imagine the chaos that would result if American vessels employing American seamen were subjected to picketing at foreign ports because our vessels did not provide the standards of cleanliness required on vessels of some Scandinavian countries, or the same types of rice food or beverage considered essential on merchant vessels operated by some Oriental nations.

It will be recalled that in the testimony of Appellant Willoughby, the Seattle agent for the Defendant-Appellant, Marine Cooks and Stewards, AFL, he stated that he was unable to find anyone aboard the vessel or at Tacoma with whom he could undertake to enter into collective bargaining negotiations (R. 29). No one could reasonably expect a shipowner to provide an officer or representative with authority to enter into collective bargaining at every port of call. Masters of vessels do not ordinarily conduct collective bargaining negotiations and with the responsibilities and administrative duties already imposed upon a master it would be unreasonable to expect a master to assume this additional burden.

With particular reference to international relations, foreign trade and maritime commerce between the

various sovereign nations, the Supreme Court stated in *Lauritzen v. Larsen*:

> "If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea. Hence, courts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality. * * *
>
> "International or maritime law in such matters as this does not seek uniformity and does not purport to restrict any nation from making and altering its laws to govern its own shipping and territory. * * *
>
> "But in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant *application of our law to a foreign transaction will logically be as strong a warrant for a foreign country to apply its law to an American transaction.*"
>
> *Lauritzen v. Larsen,* 345 U.S. 571, 581-2, 73 S.Ct. 921, 97 L.ed. 1254, 1267 (Italics added for emphasis)

The case of *Aetna Freight Lines v. Clayton,* 228 F. (2d) 384 (C.A. 2, 1955), and other cases cited by Appellants in support of their argument that a labor dispute existed in this case are not in point because all of such cases involved *American* employers and controversies over terms and conditions of employment within the United States.

(1) The Inapplicability of the Norris-LaGuardia Act to a Foreign Dispute Is Clearly Shown by the Supreme Court Decision in the *Benz* Case Involving Similar Language Under the Taft-Hartley Act

Only last spring the Supreme Court of the United States had occasion to consider whether the Labor Management Relations Act of 1947 (Taft-Hartley Act) 29 U.S.C. §141 was applicable to a foreign shipowner's claim for damages against the members of American unions who engaged in picketing a foreign ship, manned entirely by foreign or alien seamen serving under foreign shipping articles, where the picketing occurred while the vessel was temporarily in a United States port. *Benz v. Compania Naviera Hidalgo, S.A.*, 353 U.S. 138, 77 S.Ct. 699, 1 L.ed.(2d) 709, the case being an outgrowth of the "RIVIERA" litigation before Judge Solomon, discussed earlier in this brief. Mr. Justice Clark, in the majority opinion (7-1, with one Justice not participating) which held that the Taft-Hartley Act was not applicable to a controversy involving a foreign flag vessel, stated:

> "Our study of the Act leaves us convinced that Congress did not fashion it to resolve labor disputes between nationals of other countries operating ships under foreign laws."
>
> *Benz v. Compania Naviera Hidalgo, S.A.* (1957) 1 L.ed.(2d) 709, 713.

Prior decision of this Court is reported at 233 F. (2d) 62 (1956).

The majority opinion of the Supreme Court in *Benz, supra,* emphasized that Congress has carefully and expressly specified those limited instances where adequate

reason has been found to extend application of Federal statutes to foreign vessels and crew members serving thereon. These specific situations are enumerated in the *Benz* decision.

The significance of the *Benz* case is clearly shown by a comparison of the language of the Norris-LaGuardia Act with the Taft-Hartley Act.

Both Acts contain recitals as to the inability of the individual workman to adequately protect his interests in relations with employers and declare a purpose to promote collective bargaining. Compare 29 U.S.C. §102 with 29 U.S.C. §151 (Texts in Appendix D). The definition of labor disputes in the Taft-Hartley Act (29 U.S.C. §152(9)) is identical with that in the Norris-LaGuardia Act (29 U.S.C. §113(c)) except that it includes the phrase, "terms, tenure or conditions of employment" instead of merely "terms or conditions of employment."

Since the purpose of the two acts is the same and the definition of labor dispute is the same, it would certainly seem that if the U. S. Supreme Court found Taft-Hartley is inapplicable to a dispute such as this, as was held in *Benz,* Norris-LaGuardia would likewise be inapplicable.

Although the Norris-LaGuardia Act by its terms makes no reference to foreign commerce, the Taft-Hartley Act is specifically made applicable to commerce "between any foreign country and any State" (29 U.S.C. §152(6)). Despite this express reference to foreign commerce, the Supreme Court in the *Benz* case, *supra,* found that the Taft-Hartley Act was inappli-

cable to a controversy involving labor on a foreign flag vessel calling at a United States port on an international or foreign voyage.

Appellants argue that the Norris-LaGuardia Act is "procedural" while the Taft-Hartley Act is "substantive" (Br. 16). Certainly many of the provisions of the Taft-Hartley Act are not *substantive* but are concerned with the *procedures* set up for collective bargaining. The Norris-LaGuardia Act has been construed to make legal certain actions which were theretofore criminal, in *United States v. Hutchinson* (1940) 312 U.S. 219, 61 S.Ct. 463, 85 L.ed. 788; and to have general substantive effect in *Oregon Shipbuilding Corp. v. N.L.R.B.* (D. Ore., 1943) 49 F.Supp. 386.

D. Non-Violent Picketing May Be Enjoined Without Notice to Any Public Officer Where There Is No Labor Dispute

In Sections C and D of their brief Appellants argue that since (in their view) the matters in controversy with respect to the "NIKOLOS" were within the terms of the Norris-LaGuardia Act, the court below should not have granted a temporary injunction because Appellees failed to make necessary showings as to:

(a) Presence of fraud or violence as a condition precedent to injunctive relief under Section 4 of the Act under 29 U.S.C. §104(e). (See Section C of Appellants' Brief (Br. 16-17); and

(b) Inability of public officers adequately to protect property, as required under Section 7(e) of the Act under 29 U.S.C. §107(e). (See Section D of Appellants' Brief (Br. 17-18).

During the proceedings in the court below counsel for Appellants requested the trial court to make specific findings as to each of the above, and this was done (See Findings XXII and XXIII at R. 36). In acceding to counsel's request for these findings the following was stated:

> "MR. VANCE: I was wondering if your Honor would care to make this further finding, then, on the same paragraph, that there has been no fraud or any violence or threat thereof by the defendants? It is my theory that the Court's only power is an injunction under the Norris-LaGuardia Act and under that Section 107(e), is to restrain fraud or violence.
>
> "THE COURT: If you mean in the sense of physical violence, there is no problem about that. I will so find. But whether or no the coasting of a boat back and forth in front of another boat with a sign on it under these particular circumstances comes within the definition of violence in the sense that it prohibits the ship from proceeding, and so on, certainly nobody has been assaulted or anything of that kind, nor even threatened with it, nor has there been any indication that it would happen, and I am certain it wouldn't." (R. 129-30)

As to Appellants' claim with respect to the necessity of a showing of fraud or violence under Section 4, the point need not be developed further since the language of the Act makes it clear that picketing is not protected from injunction, even if no violence is involved or potentially menaced, except where a *"labor dispute"* is involved. 29 U.S.C. §104(e). As already shown, there is no labor dispute in this case within the terms and

proper construction of the Norris-LaGuardia Act. Nonviolent picketing was therefore properly enjoined by the court below.

When the Findings were settled during the proceedings below, the learned trial judge himself suggested the Finding:

> "That no public officer, either local, state, or national, is charged with the duty or in fact authorized to provide protection of the character needed here by preventing the activities of the Will-O-Bee in the Harbor." (R. 128)

Slightly modified, this was incorporated as Finding XXII (R. 36). Appellants did not introduce evidence or call the Court's attention to any law to show that there were any such officers or that they were empowered to provide such protection. Appellants took no exception to the finding proposed by the court and they can hardly complain now that the judge did not summon officers he found to be non-existent.

In any event, where there is no "labor dispute" under the Act, the requirements of 29 U.S.C. §107(e) are wholly irrelevant.

E. International Treaty Commitments of the United States Would Be Violated If Injunctive Relief Was Denied to Appellees

On August 8, 1938, the United States and Liberia entered into a Treaty of Friendship, Commerce, and Navigation which is still in effect between the two countries. 54 Stat. 1739; TS 956; 201 LNTS 163.

Article VII of this Treaty provides as follows:

> "Between the territories of the High Contract-

ing Parties there shall be freedom of commerce and navigation. The nationals of each of the High Contracting Parties equally with those of the most-favored nation, shall have liberty freely to come with their vessels and cargoes to all places, ports and waters of every kind within the territorial limits of the other which are or may be open to foreign commerce and navigation."

Article XIV of this Treaty provides as follows:

"The merchant or other private vessels and cargoes of one of the High Contracting Parties shall, within the territorial waters and harbors of the other Party in all respects and unconditionally be accorded the same treatment as the vessel and cargoes of that Party, irrespective of the port of departure of the vessel, or the port of destination, and irrespective of the origin or the destination of the cargo. It is especially agreed that no duties of tonnage, harbor, pilotage, lighthouse, quarantine, or other similar or corresponding duties or charges of whatever denomination, levied in the name or for the profit of the Government, public functionaries, private individuals, corporations or establishments of any kind shall be imposed in the ports of the territories or territorial waters of either country upon the vessels of the other, which shall not equally, under the same conditions, be imposed on national vessels."

The arguments advanced by Appellants in this case run directly contrary to the policies to which the government of the United States has become committed by the above Treaty entered into with the Republic of Liberia, under whose flag the "NIKOLOS" was being operated at the time of its call at Tacoma (Finding V, R. 32).

It must be remembered that the owner of a United States flag vessel, picketed as the "NIKOLOS" was here, has remedies not available to Appellees. For example, he can petition the National Labor Relations Board to determine and certify a collective bargaining agent for his employees. 29 U.S.C. §159(c)(1)(B). Once an agent is so certified, it then becomes an unfair labor practice for any other union to picket to secure the right to bargain for the employees. 29 U.S.C. §158(b)(4)(C). But even before the Supreme Court's decision in the *Benz* case, the Board held it had no jurisdiction to hold an election to determine the representative for the crew of a foreign vessel. *Compania Maritima Samsoc Limitada,* Case No. 20-RC-809, May 1, 1950, CCH NLRB Decisions, 1950-1951, ¶ 10,081. Even if Appellees dealt with Appellants and arrived at a collective bargaining agreement they would have no protection from different demands by a different American union at the next United States port at which the "NIKOLOS" called.

To require a foreign shipowner to meet the collective bargaining requirements which are the substantive purpose of the Norris-LaGuardia Act without the aid of the machinery provided by the Labor Management Relations Act would be to deny foreign flag vessels "in all respects and unconditionally * * * the same treatment" as United States flag vessels.

If uniformity on an international level is found desirable, the United States government has the alternative of participating in an international convention covering such subject matter. It has seen fit to do so on

some other aspects of labor standards in maritime commerce and shipping, such as:

> Minimum Age (Seamen) Convention of 1936, 54 Stat. 1705, Treaty Series No. 952;
>
> Officers Competency Certificate Convention of 1936, 54 Stat. 1683, Treaty Series No. 950, incorporated into statute at 46 U.S.C. §224a;
>
> Shipowners' Liability (Sick and Injured Seamen) Convention of 1936, 54 Stat. 1693, Treaty Series No. 951.

Judge Boldt recognized the grave consequences involved in Appellants' attempts to interfere with the internal economy of this foreign vessel when he stated in his decision:

> " * * * in my judgment interference in a United States port with the lawful performance of a lawful contract by a foreign vessel and crew of a friendly foreign power, is conduct which amounts to an unlawful interference with international commerce and with the obligations of the nation under international law and the comity of nations. * * * "
>
> "Now, the point of our case is that because we have international obligations involved here of paramount importance to the welfare and security of the nation, particularly at this critical time in world history, the interference with wholly lawful activities of the commerce of a friendly foreign power are unlawful, and, therefore, regardless of how well founded or grounded the reasons for employing that unlawful conduct, the court has the power and the duty to restrain it." (R. 121, 122)

In an action for injunctive relief under the Norris-LaGuardia Act one court has stated:

> "Courts are more concerned where the public interest is at stake in an effort to safeguard that interest."
>
> *N. Y. Central R. Co. v. Brotherhood Trainmen* (N.D. Ohio 1956) 140 F.Supp. 273, 281.

Immediately following the above quotation in the *N. Y. Central* case, *supra,* the opinion of the court cites and quotes from numerous U. S. Supreme Court decisions in support of the proposition that courts of equity have frequently gone much further to grant injunctive relief where a controversy is likely to have consequences affecting the public interest far beyond the parties involved in the specific case. We submit that the same applies in this case.

CONCLUSION

In summary, Appellees submit that the entirely foreign and international aspects of the vessel, its crew, and the trade in which it was engaged in the present case, clearly indicate a situation outside of the Norris-LaGuardia Act.

Unless and until the United States government by Treaty, Convention or statute expressly provides for control over such matters as herein involved, broad and universal language in isolated portions of the Act which was obviously intended to promote collective bargaining in domestic labor disputes, should not be held applicable to terms and conditions of employment for alien crew members on a foreign-owned and registered vessel which happens to call occasionally at a United States port.

As otherwise stated by Mr. Justice Clark in the majority opinion in the *Benz* case, *supra*:

> "For us to run interference in such a delicate field of international relations there must be present the *affirmative intention of the Congress clearly expressed.*"
>
> *Benz v. Compania Naviera Hidalgo, S.A.*, 353 U.S. 138, 77 S.Ct. 699, 1 L.ed.(2d) 709, 715, 1957 A.M.C. 900, 906-7. (Italics supplied for emphasis)

For the above reasons, and upon the numerous authorities cited, the decision of the court below granting an interlocutory or temporary injunction *pendente lite* should be affirmed and the case should be returned to the trial court to proceed with a determination of the remaining issues.

Respectfully submitted,

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CHARLES B. HOWARD,
JOHN D. MOSSER,
Attorneys for Appellees.

APPENDIX A

EXHIBITS

Plaintiffs

	Identified	*Admitted*
1—Photograph of Nikolos	R 55	56
2—Photograph of Nikolos	55	56
3—Greek Collective Bargaining Agreement	69	73

APPENDIX B

FRIENDSHIP, COMMERCE, AND NAVIGATION

Treaty Between the United States and Liberia, Signed at Monrovia, August 8, 1938

* * *

Article VII

Between the territories of the High Contracting Parties there shall be freedom of commerce and navigation. The nationals of each of the High Contracting Parties equally with those of the most-favored nation, shall have liberty freely to come with their vessels and cargoes to all places, ports and waters of every kind within the territorial limits of the other which are or may be open to foreign commerce and navigation.

* * *

Article XIV

The merchant or other private vessels and cargoes of one of the High Contracting Parties shall, within the territorial waters and harbors of the other Party in all respects and unconditionally be accorded the same treatment as the vessel and cargoes of that Party, irrespective of the port of departure of the vessel, or the port of destination, and irrespective of the origin or the destination of the cargo. It is especially agreed that no duties of tonnage, harbor, pilotage, lighthouse, quarantine, or other similar or corresponding duties or charges of whatever denomination, levied in the name or for the profit of the Government, public functionaries, private individuals, corporations or establishments of any kind shall be imposed in the ports of the territories or territorial waters of either country upon the vessels of the other, which shall not equally, under the same conditions, be imposed on national vessels.

* * *

PPENDIX C

NORRIS-LaGUARDIA ACT

29 U.S.C.A. §102

102. Public Policy in Labor Matters Declared

In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of ie United States, as such jurisdiction and authority re defined and limited in this chapter, the public olicy of the United States is declared as follows:

Whereas under prevailing economic conditions, deeloped with the aid of governmental authority for wners of property to organize in the corporate and her forms of ownership association, the individual norganized worker is commonly helpless to exercise tual liberty of contract and to protect his freedom f labor, and thereby to obtain acceptable terms and nditions of employment, wherefore, though he should free to decline to associate with his fellows, it is ecessary that he have full freedom of association, selfganization, and designation of representatives of his vn choosing, to negotiate the terms and conditions of s employment, and that he shall be free from the inrference, restraint, or coercion of employers of bor, or their agents, in the designation of such repsentatives or in self-organization or in other conrted activities for the purpose of collective bargaing or other mutual aid or protection; therefore, the llowing definitions of and limitations upon the jurisction and authority of the courts of the United States e enacted. Mar. 23, 1932, c. 90, §2, 47 Stat. 70.

29 U.S.C.A. §113

113. Definitions of Terms and Words Used in Chapter

When used in this chapter, and for the purposes of is chapter—

APPENDIX B

FRIENDSHIP, COMMERCE, AND NAVIGATION

Treaty Between the United States and Liberia, Signed at Monrovia, August 8, 1938

* * *

Article VII

Between the territories of the High Contracting Parties there shall be freedom of commerce and navigation. The nationals of each of the High Contracting Parties equally with those of the most-favored nation, shall have liberty freely to come with their vessels and cargoes to all places, ports and waters of every kind within the territorial limits of the other which are or may be open to foreign commerce and navigation.

* * *

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* * *

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29 U.S.C.A. §102

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In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted. Mar. 23, 1932, c. 90, §2, 47 Stat. 70.

29 U.S.C.A. §113

113. Definitions of Terms and Words Used in Chapter

When used in this chapter, and for the purposes of this chapter—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means

ny court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia. Mar. 23, 1932, c. 90, §13, 47 Stat. 73.

APPENDIX D

TAFT-HARTLEY ACT

29 U.S.C.A. §151

151. Findings and Declaration of Policy

* * *

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stablization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

* * *

APPENDIX E

OPINION OF DISTRICT COURT

On Issuance of Injunction, *Compania Naviera Hidalgo S.A. v. Benz, et al*, November 22, 1952 (D. Ore. Civil No. 6629)

SOLOMON, J.

This case is before the Court on plaintiff's motion for a temporary injunction restraining the defendants from picketing the SS RIVIERA. The RIVIERA is owned by plaintiff, a Panamanian corporation; it is registered under the Liberian flag, and all of its crew are foreign nationals, primarily German.

In a prior case brought by plaintiff against the vessel for a possessory libel I found that the activities of the members of the crew in failing to obey the orders of the Master and in remaining on the vessel after they were discharged and ordered off the vessel constituted criminal conduct. I therefore ordered the members of the crew off the vessel. (See my oral opinion dated September 25, 1952, in Civil 6629.)

Later in the case brought by the striking members of the crew against the vessel for wages, penalties and transportation which case was consolidated for trial with the case brought by the plaintiff herein against the members of the crew and the Sailors' Union of the Pacific for damages I found that the members of the crew did not go to strike for any of the reasons alleged in the libel but solely because they wanted to cut down the term of their service from two years, and length of the service agreed upon in their articles, and also to obtain a higher wage rate than that agreed upon in such articles. (See my oral opinion rendered October 22, 1952, in Civil 6652 and Civil 6661.)

Defendants contend that the Norris-LaGuardia Act (29 USCA, Section 101 *et seq.*) deprives this Court of jurisdiction to issue an injunction because this case involves a labor dispute.

It is apparent from the affidavits filed in opposition to the Motion that the picketing and striking action taken by the Sailors' Union of the Pacific and the other defendants is solely for the benefit of the striking crew members of the RIVIERA and is not for the purpose of placing American seamen on the vessel.

It is a well-established rule when seamen sign articles on a vessel for a voyage they work under different conditions from workers on the shore and they must of necessity be governed by different rules with regard to their right to strike. Seamen are wards of the Admiralty, that is, great care has been taken by the United States and other nations to safeguard their rights and protect them from injustice. In view of such paternal attitude, the courts have held that it is not only right and proper but also absolutely necessary that seamen must strictly adhere to their contracts. "When articles are signed by a crew for a voyage all bargaining individual or collective is ended for the duration of the voyage. A contract is made binding both on the owner and the seamen that is lawful, if the articles comply with the statutes, and should be lived up to scrupulously." Rees v. U.S., 95 Federal Second 784, 791, 792. In this case the seamen signed articles which entitled them to the same rights, privileges and working conditions as British seamen. The provisions of the articles are the standard articles used for foreign voyages in Great Britain and were arrived at through collective bargaining. In addition thereto, such articles were approved by the German Labor Office for the German seamen who constitute the majority of the crew at the time they signed the articles in Bremen, Germany.

Therefore they may not now in a foreign port during the period for which they signed on, either themselves or through the Sailors' Union of the Pacific or any other bargaining agent, attempt to reopen the question of wages, hours and working conditions which had previously been agreed upon in the articles which they signed with the vessel.

Defendants also contend that this Court has no jurisdiction because the owners have not exhausted their remedies and must proceed in accordance with the provisions of the Labor Management Relations Act (Taft-Hartley Act) and until they have exhausted their administrative remedies afforded by such act they may not seek relief in the courts. It seems clear to me that the Taft-Hartley Act is concerned solely with the labor relations of American workers between American concerns and their employees in the United States, and it is not intended to, nor does it cover a dispute between a foreign ship and its foreign crew. The National Labor Relations Board has construed the act in the same way. In a petition brought by the Sailors' Union of the Pacific to represent foreign seamen on a ship registered under a foreign flag the National Labor Relations Board dismissed the petition on the ground that the internal economy of a vessel of a foreign registry and ownership was involved. (Compania Maritima Samsok Ltd., Sailors' Union of the Pacific A.F.L.) Case Number 20-RC-809 May 1, 1950.

I am of the opinion, in view of the evidence, that the plaintiff is entitled to the interlocutory injunction.